

“Is the Federal Government Doing All it Can to Stem the Flow of Illegal Immigration?”

Opening Statement of Chairman Candice S. Miller

Committee on Government Reform
Subcommittee on Regulatory Affairs

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2154 Rayburn House Office Building

Good morning. The Subcommittee on Regulatory Affairs will come to order. I would like to welcome everyone to our hearing today on the Federal Government’s ability to enforce current immigration laws against employers who flout the law by employing illegal workers with impunity.

If law-makers are committed to stemming the tide of illegal immigrants across our borders, it is essential to enforce the laws against employing illegal aliens. It is the promise of these jobs that entices so many illegal aliens to leave their homeland and risk the perils of a border crossing. However, through generations of practice, they have learned that once in America they are home free. Many employers have also come to realize that no one is checking up on them. In some industries, this makes the lure of cheap illegal labor almost irresistible.

These immigrants and employers long ago figured out the sorry fact what we have only recently become aware of: the 1986 immigration law was designed to fail. The current system in place hampers the ability of the Federal Government to enforce immigration laws and crack down on employers who openly disregard the law.

Let me briefly detail some of the problematic provisions that currently prevent the Federal Government from being proactive:

1. With respect to documentation: There is a very low level of certainty that employee documents are valid because employers are forced to accept a diverse variety of identity and work authorization documentation.

- Unless a prospective employee’s ID is obviously fake, the employer must accept it.
- These identification documents include school ID cards, Canadian Driver’s licenses, school report cards, and day care or nursery school records!
- Additionally, the 1986 immigration law, IRCA, set the penalties for violating the law very low and the standard for proving a violation very high.
- There is no requirement that employers retain copies of the identification and work authorization documents they review or any subsequent documentation that they might receive that pertains to the work authorization of the individual.

This scheme not only makes the immigration laws difficult to enforce, it also provides a perverse incentive for the proliferation of fraudulent documents and identity theft.

2. The current legal framework puts up firewalls between the Social Security Administration (SSA) and Department of Homeland Security that prohibit SSA from sharing actionable information about the most egregious violators of immigration law with The Immigration and Customs Enforcement the agency charged with enforcing the 1986 immigration law and the 1996 reform legislation.

- SSA has a database called the Earning Suspense File (ESF) that could be used to crack down on employers who hire illegal workers. However, SSA has no authority to take action against the employer who submits wage reports that contain “no matches.”
- Additionally, SSA interprets IRS Code, Title 26, § 6103, to prevent them from sharing information derived from wage reports with any other agency, absent explicit statutory authorization. ICE has indicated that access to some of this information would be a very valuable tool to help focus their enforcement activities.
- Meanwhile, the IRS is the only agency with both the W-2 information and enforcement capability, based on their authority to target individuals who submit fraudulent tax documents. Unfortunately, the IRS has decided as a matter of policy and priority to not pursue these violations.

3. Finally, and most shocking, is that no government entity is charged with inspections of I-9 Forms, absent “reasonable suspicion” of wrongdoing.

- DOL has authority to review I-9 documents, but I-9 inspections occur only as a tangential inquiry of a directed fair labor investigation.
- DHS also has authority to review I-9s, but must rely on tips. Denied access to the ESF, DHS has limited ability to target private sector employers who consistently violate the law.

To use a tongue in cheek example, this would be like asking American’s to file their taxes in good faith with zero threat of IRS inspectors to check on their submissions. I have a suspicion that if we were to operate our tax collection in this manner, tax receipts would drop dramatically!

In summary, Congress devised a system that asks employers to be familiar with 30 plus obscure documents under penalty of law, but with a wink and a nod, declines to establish a system to verify compliance.

Let me be clear. The purpose of this hearing is not to blame the current administration- or the witnesses before us for this deficient system. Every Administration is bound by the laws that we, the U.S. Congress, pass. It is incumbent on Members of Congress to understand the problem as it exists and offer a realistic solution.

With that, I recognize the distinguished Member from Massachusetts; Ranking Member Lynch for his opening statement.